## THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION

3:12-cv-00327-MOC (3:97-cr-00023-MOC-1)

AQUILIA MARCIVICCI BARNETTE,	)	
Petitioner,	)	
vs.	)	OPPER
UNITED STATES OF AMERICA,	)	<u>ORDER</u>
Respondent.	)	
	)	

THIS MATTER is before the Court upon the United States' Motion to continue the stay of these 28 U.S.C. § 2255 proceedings until the United States Supreme Court decides <u>United States v. Davis</u>, No. 18-431. (Doc. No. 126.) Petitioner does not oppose the Motion. (Doc. No. 126 at 2.)

On December 8, 2016, the Court entered an Order holding this action in abeyance pending decisions by the United States Supreme Court in Lynch v. Dimaya, No. 15-1498, decided sub nom Sessions v. Dimaya, 138 S.Ct. 1204 (2018), and the Fourth Circuit Court of Appeals in United States v. Simms, No. 15-4640. (Doc. No. 124.) On November 9, 2018, the Court granted the United States 60 days to respond to Petitioner's supplemental motion to vacate after the Fourth Circuit's decision in United States v. Simms, No. 15-4640, "becomes final after en banc review." (Doc. No. 125.) The Supreme Court granted a petition for a writ of certiorari in Davis on the same question considered by Simms —whether the residual clause of the definition of "crime of violence" in 18 U.S.C. § 924(c)(3)(B)— is unconstitutionally vague. And the Fourth Circuit stayed its mandate in Simms pending the Supreme Court's decision in Davis.

Order, United States v. Simms, No. 15-4640 (Feb. 4, 2019), Doc. No. 92.

The United States requests that this action remain in abeyance until the Supreme Court issues its decision in <u>Davis</u>. The United States also seeks 60 days after the Supreme Court issues its decision to respond to Petitioner's supplemental § 2255 Motion. For good cause shown and with the consent of opposing counsel, the Motion shall be granted.

IT IS, THEREFORE, ORDERED that the United States' Motion to continue the stay of these proceedings until the United States Supreme Court decides <u>United States v. Davis</u>, No. 18-43 (Doc. No. 126) is **GRANTED**. The United States shall have 60 days after the Supreme Court issues its decision to respond to Petitioner's supplemental Motion to Vacate.

Signed: April 8, 2019

Max O. Cogburn Jr United States District Judge